



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

Case No.: 470-2014-00257

██████████,  
Complainant,

v.

GENE B. GLICK COMPANY,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”) pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2 (b).

On October 15, 2013, ██████████ (“Complainant”) filed a Complaint with the Commission against Gene B. Glick Company (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) and Title I of the Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was denied a reasonable accommodation for her disability. In order to prevail, Complainant must show that: (1) she has (or was regarded as having) an impairment that substantially limits a major life activity; (2) Complainant requested a reasonable accommodation; (3) Respondent knew or should have known of Complainant’s need for a reasonable accommodation; and (4) Respondent unreasonably delayed or denied Complainant’s request for a reasonable accommodation.

By way of background, Respondent hired Complainant on or about August 16, 2003 as a Property Manager at its Jamestown Square Apartments in Washington, IN. At all times relevant to the Complaint, Complainant’s duties included but were not limited to managing the site, planning, budgeting, supervising maintenance, and performing administrative tasks such as financial reporting, supervising the collection of rent and depositing, and other duties. While Complainant suffered from a condition that was aggravated by prolonged standing and walking, evidence shows that Complainant met Respondent’s legitimate business expectations from



2003 through 2012. During the time relevant to the Complaint, Complainant had two supervisors. The first supervisor, Kimberly Klein, Regional Property Manager, supervised Complainant in 2011 through the majority of 2012. While Respondent asserts it was unaware of Complainant's medical condition until April 2013, Complainant asserts that she informed Klein as early as the summer of 2012 that she experienced difficulty with prolonged standing and walking. Moreover, Klein admitted that she was aware that Complainant suffered from a medical condition before April 2013 and admitted that she provided Complainant with several accommodations including exempting her participating in Real Estate Assessment Center ("REAC") inspections. Nonetheless, Complainant met expectations, despite receiving a Property Management Action Plan, as evidenced by her overall rating of "meets expectations" on her January 2013 performance evaluation.

In late 2012, Terri Owens became Complainant's supervisor. It is important to note that no evidence has been provided or uncovered to show that Klein relayed the information regarding Complainant's condition to Owens, Human Resources, or another level of supervision. While Owens asserts she was unaware of Complainant's medical condition until April 2013, Complainant asserts that she informed Owens during a manager's conference during the week of March 17, 2013, that she could not attend a non-mandatory function because of back pain associated with her disability. On or about March 27, 2013, Owens and Sarah Wood, Vice President of Property Management, visited Complainant's property for a site review; however, evidence shows that Complainant was out of the office with a respiratory illness. Shortly thereafter, on or about April 4, 2013, Wood and Owens visited the property a second time and noted problems with the property despite knowing that Complainant spent minimal time at the property because of her illness and the conference. Complainant asserts and Respondent admits that she contacted Lisa Rees ("Rees") in Human Resources stating that she was having problems with her leg, having tests done, and requested how to document the need for an accommodation. Several days later, on or about April 10, 2013, Owens issued Complainant a "Final Written Warning Notice" citing several deficiencies in Complainant's property and on or about April 18, 2013, Brad Hobbes ("Hobbes," ) a Maintenance Operations Manager asked Complainant to "take place in the REAC inspection" although she never participated in an REAC inspection in the prior seven inspections during her tenure with Respondent. Moreover, evidence has been provided to show that similarly-situated property managers without disabilities were not asked to "take place" in such inspections.

Eventually, in early May 2013, Rees responded to Complainant's request and indicated that she could not address Complainant's complaints until they received documentation from a physician; as such, on or about May 3, 2013, Complainant asserts and Respondent admits that Complainant provided documentation from a physician stating that "prolonged standing and walking aggravates" her condition. Shortly thereafter, Rees sent Complainant a letter asking for clarifying information regarding her condition and for Complainant to identify particular job duties Complainant could perform with her condition. On or about May 14, 2013, Complainant emailed Rees indicating the duties she could perform with a reasonable accommodation and noted that she would be scheduled for an MRI on or about May 29, 2013. Further, Complainant

provided a doctor's note on or about May 21, 2013, providing that Complainant was seen and evaluated on or about April 26, 2013, limited in work related activities associated with standing and walking, and that the extent of the limitation would be more defined after an MRI. Ultimately, on or about June 10, 2013, Respondent terminated Complainant for poor job performance.

Despite Respondent's assertions, evidence shows that it unreasonably delayed Complainant's request for an accommodation and failed to actively engage in the interactive dialogue process with Complainant. Specifically, evidence shows that Complainant first notified Respondent of her condition in 2012 and that Respondent accommodated her disability for a short period of time; nonetheless, Respondent later failed to maintain the accommodation and terminated Complainant's employment rather than enter into the interactive dialogue process in an attempt to find a solution which would permit Complainant to maintain her employment. As such and based upon the aforementioned, probable cause exists to believe that an unlawful discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

January 9, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission